

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

CHESTER RAY JOHNSON §  
v. § CIVIL ACTION NO. 6:13cv562  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Chester Johnson, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson challenges disciplinary case no. 20120272849, in which he was convicted of threatening an officer. He also made reference to the legality of his underlying conviction.

After review of the pleadings and the state records, including a recording of Johnson's disciplinary hearing, the Magistrate Judge issued a Report recommending that Johnson's petition be dismissed. The Magistrate Judge concluded that sufficient evidence existed to support the finding of guilt and that Johnson was not denied the process he was due. The Magistrate Judge also stated that any claim which Johnson may be raising concerning his underlying conviction was barred as successive under 28 U.S.C. §2244(b)(3) because Johnson failed to show that he had obtained permission from the Fifth Circuit to file a successive petition.

In his objections, Johnson asserts that the Magistrate Judge must show a chain of custody for the tape of the disciplinary hearing to prove that it has not been altered, the witnesses at the

disciplinary hearing committed perjury, the diabetic flow sheet was wrongly excluded from the hearing, the Magistrate Judge was biased against him, the Respondent failed to produce records relevant to his conviction and the Director of TDCJ possesses records showing that Bowie County and the State of Texas kidnapped Johnson and smuggled him into prison on Saturday, December 10, 1983, thereby imprisoning an innocent person as part of a continuous conspiracy.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 15) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice as to Johnson's disciplinary case, and DISMISSED without prejudice as to Johnson's claims concerning his underlying criminal conviction, until such time as Johnson receives permission from the Fifth Circuit Court of Appeals to file a successive petition. He cannot refile his challenge to the criminal conviction until such permission is received. It is further

ORDERED that the Petitioner Chester Johnson is hereby DENIED a certificate of appealability *sua sponte* with regard to an appeal from the present case. Finally, it is

ORDERED that any other motions which may be pending in this case are hereby DENIED.

**It is SO ORDERED.**

SIGNED this 29th day of April, 2015.



MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE